IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICGTION

INCOME TAX REFERENCE NO. 669 of 1987

The Commissioner of Income Tax ... Applicant.

vs.

Late D.A. Thakersey ..... Respondent

Mr.Ashok Kotangale for Applicant.

CORAM: V. C. DAGA
AND
A. S. AGUIAR JJ.
Date:29th June, 2005.

P. C.:

1. Heard learned counsel for the applicant. None for the Respondent, inspite of service. In this application of the Revenue under section 256(1) of the Income-tax Act, the following question was referred for the opinion of this Court:

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the provisions of section 168 of the I. T. Act were not applicable in tis case and in consequently cancelling the

assessment made in the hands of the estate through the executor?"

2. Learned counsel appearing for the applicant submits that the question referred to this court for opinion is squarely covered by the judgment of this court delivered in the case of **C.I.T. vs. Usha D. Shah [1981] 127 ITR 850 Bom.**, wherein it has been ruled that the effect of section 168 is that it is obligatory to tax the estate of the deceased person in the hands of executor. The provision does not seem to leave any discretion to the Income-tax Authorities in this behalf. In this view of the matter the question referred to is answered in favour of the Revenue and against the Assessee.

(V. C. DAGA J.)

(A. S. AGUIAR J.)

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